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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/730,760	12/08/2003	John A. Dyjach	279.663US1	3450

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EXAMINER	
SMITH, TERRI L	

ART UNIT	PAPER NUMBER
3762	

MAIL DATE	DELIVERY MODE
05/18/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ED

Office Action Summary	Application No.	Applicant(s)	
	10/730,760	DYJACH ET AL.	
	Examiner	Art Unit	
	Terri L. Smith	3762	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *11 September 2006*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-60* is/are pending in the application.

4a) Of the above claim(s) *1-28* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *29-60* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Arguments

1. Applicant's arguments filed on 11 September 2006 with respect to claims 29–60 have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment.

2. Additionally, in response to Applicant's argument that there is no suggestion to combine the references, the Examiner recognizes that references cannot be arbitrarily combined and that there must be some reason why one skilled in the art would be motivated to make the proposed combination of primary and secondary references. *In re Nomiyal*, 184 USPQ 607 (CCPA 1975). However, there is no requirement that a motivation to make the modification be expressly articulated. The test for combining references is what the combination of disclosures taken, as a whole would suggest to one of ordinary skill in the art. *In re* McLaughlin, 170 USPQ 209 (CCPA). References are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures. *In re Bozek*, 163 USPQ 545 (CCPA) 1969. In this case, the Examiner will once again combine several references to reject the claims set forth in the present invention.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office Action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the Examiner presumes that the subject matter of the various

claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the Examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

5. Claims 29–43 and 45–60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marcus et al., U.S. Patent 6,978,184 and in view of Stone et al., U.S. Patent 6,280,409.

6. Marcus discloses a plurality of interface channels and a controller (e.g., Figs. 1–3; column 3, lines 39–40; column 4, lines 39–52; column 5, lines 16–18, 50–53 and 65; ABSTRACT, lines 1–6 and 8; column 6, lines 8–9 and 17–20);

a memory; (e.g., column 3, lines 39–40; column 4, lines 42–43; ABSTRACT, line 8, where it is the Examiner's position that because the pacemaker is programmed it inherently has a memory);

a communication circuit and a programmer to program a CRM (e.g., Figs., 3–5; elements 35 coupled with elements 42 and 41 where it is the Examiner's position that because the pacemaker transmits recorded data as shown by its communication through a programming head, 42, to the external pacemaker programmer, 41 (which is the programmer to program a CRM), it inherently has a communication circuit; column 10, line 64–column 11, line 44). It is noted that it is the Examiner's position that the data represented in Fig. 4 and all data being communicated (i.e., paced, sensed, sampled, analyzed, tested, compared etc.) between the pacemaker, programming head, pacemaker programmer and SCG/ECG analysis system as described in Figs.

3 and 5 meets the claimed limitations of all of the trend samples of data and trended data as set forth in claims 36–41, 51–53, 56–57 and 60 of the present invention).

Marcus et al. do not disclose a plurality of electrodes on at least one lead. However, Stone et al. disclose a plurality of electrodes on at least one lead (e.g., Fig. 7, elements 80–82 located in element H) to improve the pumping efficiency of the heart by providing an electrical stimulation that will properly synchronize ventricular contractions. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the invention of Marcus et al. to include a plurality of electrodes on at least one lead, as taught by Stone et al. to improve the pumping efficiency of the heart by providing an electrical stimulation that will properly synchronize ventricular contractions.

7. Claim 44 is rejected under 35 U.S.C. 103(a) as being unpatentable over Marcus et al., U.S. Patent 6,978,184 and Stone et al., U.S. Patent 6,280,409 as applied to claim 41 above, and further in view of Schroeppel et al., U.S. Patent 5, 749,900.

8. Marcus et al and Stone et al. disclose the essential features of the claimed invention as described above except for atrial tachycardia (AT). However, Schroeppel et al. disclose atrial tachycardia (AT) (Fig. 7; column 11, lines 40–58) to effectively recognize a cardiac anomaly in a forecast cardiac event and subsequently select and initiate appropriate therapy. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the modified inventions of Marcus et al. and Stone et al. to include atrial tachycardia (AT), as taught by Schroeppel et al. to provide appropriate, effective and safe cardiac therapy for a patient.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office Action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this Final Action is set to expire THREE MONTHS from the mailing date of this Action. In the event a first reply is filed within TWO MONTHS of the mailing date of this Final Action and the Advisory Action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the Advisory Action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the Advisory Action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this Final Action.

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Terri L. Smith whose telephone number is (571) 272-7146. The Examiner can normally be reached on 7:30 a.m. - 4:30 p.m..

If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Angela Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

TLS
May 9, 2007
9 May 2007

GEORGE R. EVANISKO
PRIMARY EXAMINER
5/10/7